

## Appendix A

### Summary of issues raised in legal submissions

Issue	Summary	EDS legal submissions reference
Scope	<p>Scope of listed project is identified by Schedule 2 FTAA. Read in context, and having regard to purpose, text, and meaning, the listing description does not include concessions required for public land. The approximate geographical location listed in Sch 2 refers solely to Bendigo and Argour stations, which are privately owned.</p> <p>Application seeks concessions over areas of public land not referred to in Schedule 2, including Ardgour Rise, SH 8, Come-In-Time, Willow and Water Monitoring Concession Areas. These are not subsidiary and trigger separate statutory approvals under different schedules of the FTAA, involving different statutory considerations.</p> <p>Panel has no jurisdiction to grant concessions in relation to these areas – <i>Ngāti Kuku Hapū Trust v Environmental Protection Agency</i> [2025] NZHC 2453.</p>	Paragraphs [17] – [40]
Presumption of approval	<p>No presumption of approval:</p> <ul style="list-style-type: none"> <li>• Section 3 (purpose of FTAA) purely procedural – i.e., facilitates an easier and faster process (per <i>Sunfield</i>), does not confer presumption of approval; or</li> <li>• In alternative, partly procedural and partly substantive, but purpose of Act does not confer presumption of approval – each step of s81(2) to be followed which may lead to either grant or decline of each individual approval.</li> </ul>	Paragraphs [41] – [70] Appendix B
Purpose of Act	<p>Purpose of Act only relevant for decision-making step in s81(2)(b), i.e., applying the criteria for assessment specified in the Schedules (e.g., clause 17, Schedule 5).</p> <p>Each assessment criteria in Schedules to be considered independently of requirement to give greatest weight to purpose of Act.</p> <p>Extent of project benefits to be considered when giving greatest weight to purpose of FTAA under relevant clauses in Schedules.</p> <p>Section 85(3) already embodies the purpose of FTAA (which involves a proportionality assessment, weighing benefits against adverse impacts). There is no requirement to double-count the purpose of</p>	Paragraphs [55] – [70] and [84] – [94].

	the Act when assessing s85(3); this would be redundant. The s3 purpose of the FTAA does not anticipate an overall broad judgement being applied at the s85(3) threshold.	
Proportionality assessment – section 85	Balancing approach where adverse impacts are weighed against national or regional benefits, having regard to conditions. Does not establish deliberately high threshold requiring strong presumption in favour of granting approval. There is no presumption in favour or against the proposal.	Paragraphs [84] – [94]
Role of policy provisions and “environmental bottom lines”	Policy “bottom line” (eg an avoid policy) can inform basis for declining provided there is another adverse impact of sufficient significance to meet the proportionality test.  This could include another policy “bottom line” – i.e., if the proposal is inconsistent or contrary to more than one policy, it may be declined if those breaches meet the s85(3)(b) test.	Paragraphs [95] – [101]
National / regional benefits	No assumption that the Project has national or regional benefits ( <i>Sunfield</i> and <i>Taranaki VTM</i> ).  Assessment of extent of benefits and their significance is factual question based on evidence and informed by judgement; context-dependent and what is significant may differ between regions.	Paragraphs [107] – [110]
EIA v CBA	CBA should be undertaken rather than EIA.  Adverse environmental impacts should be costed where appropriate and discounted from the benefits assessment (net economic assessment). Non-market values that cannot or should not be monetised should then be considered adverse impacts for purposes of section 85(3).	Paragraphs [107] – [112]
Inadequate information and uncertainty	EDS evidence demonstrates that inadequate information provided to be able to assess effects on environment.  Application could be declined on this basis under section 104(6) RMA and s17U(2) Conservation Act. If the Panel considers information inadequate to make a determination, it must take this into account (Sch 5 cl 17(1)(b)) and can be considered an adverse impact under section 85(3) (per <i>Taranaki VTM</i> ).  Adaptive management approach relies on having adequate evidential foundation to ensure outcomes can be achieved/ risk can be mitigated.	Paragraphs [241] – [259]
Precautionary approach	Where there is uncertainty of impacts on significant indigenous biodiversity, and they are potentially material or significant, a precautionary approach should be applied and the activity avoided.	Paragraphs [241] – [259]
Management plans	Consent conditions should contain performance standards that need to be complied with and can be enforced.	Paragraphs [264] – [266]

	Management plans can determine how the performance standards are complied with.	
Conditions	Ability to impose conditions not fettered by purpose of Act.	Paragraphs [260] – [263] Appendix B
Duration of water take consent	<p>Section 127B is relevant consideration under clauses 17 and 18 (Sch 5) and any breach of s127B is an adverse impact in terms of section 85(3). Section 127B RMA constrains the power to impose consent conditions by limiting duration of the water take consent to 6 years.</p> <p>There is no necessary inconsistency between the two statutory regimes (Pt 6 RMA and FTAA) and this is an issue that constrains the Panel's jurisdiction, and is bespoke to the Otago region.</p>	Paragraphs [267] – [273]
Roading	<p>Roading access cannot be granted over public roads as part of this process.</p> <p>Panel can grant approvals, but project cannot proceed without road stopping and access. This is outside scope of the FTAA process.</p> <p>To the extent relevant, which is debatable, the Applicant relies on legal access agreement with CODC but relevant parts of agreement redacted. Panel should satisfy itself that access is possible and seek unredacted version of agreement.</p>	Paragraphs [277] – [280] Appendix A
Covenant	<p>No evidence before Panel from Applicant on conservation values or effects on those values as a result of revocation of covenant undertaken.</p> <p>Assessment of Project as a whole risks obfuscating effects on conservation values of covenanted land.</p> <p>Panel should ensure it undertakes assessment against criteria in clause 45 (Schedule 6). DoC is only assessment against this criteria.</p> <p>Undermines legitimate expectation that Tenure Review outcomes would endure. Inconsistent with purpose of the Reserves Act 1977 to provide for the preservation and management of areas possessing the specified values for the benefit and enjoyment of the public.</p> <p>If revoked, Panel should impose specific conditions on the revocation relating to a replacement covenant that guarantees protection and enhancement of conservation values elsewhere.</p>	Paragraphs [281] – [285]
Wildlife Act	Purpose of Wildlife Act not met by protecting only 20% of effects on native lizard species.	Paragraphs [286] – [288]